

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 617

Limestone Mining

SPONSOR(S): Bemby

TIED BILLS:

IDEN./SIM. BILLS: SB 1338

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Agriculture & Natural Resources Policy Committee		Deslatte	Reese
2)	Natural Resources Appropriations Committee			
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The bill replaces outdated mitigation ratio language, specific to limestone, with the use of the uniform wetland mitigation assessment method when determining the amount of wetland mitigation. The bill proposes that for limestone mines, the amount of the financial responsibility mechanism for the construction of wetland mitigation be reduced from the amount required for the impacts during the entire life of the project to the amount required for three years of impacts. The initial amount of financial responsibility for permitted activities will be provided for 110% of the estimated mitigation costs affected in the first three years of operations. Each year after that, the amount of the financial responsibility will be updated for the next year of operations.

The bill would authorize limestone mine operators to apply for a life-of-the-mine permit. The Department of Environmental Protection (DEP) will coordinate and integrate the processing of the application with the application for other permits, such as industrial wastewater discharge permits and National Pollution Discharge and Elimination System (NPDES) permits. For applications filed prior to July 1, 2010, the permit must be approved or denied within 90 days.

The bill provides that the amendments to the above statutes will be retroactively applied to permits granted after September 1, 2009.

Finally, the bill conforms statutory references to use the term 'limestone'.

DEP estimates a negligible fiscal impact on the collection of permit fees since the permit fees collected would be the same as the aggregate of the fees for new permit applications and modifications.

The bill takes effect upon becoming law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Aggregate Mine Permitting

The Mandatory Nonphosphate Program, within the DEP's Bureau of Mine Reclamation, administers the laws and regulations related to the reclamation of mined land and the protection of water resources (water quality, water quantity and wetlands) at mines extracting heavy minerals, fuller's earth, limestone, dolomite & shell, gravel, sand, dirt, clay, peat, and other solid resources (except phosphate). The section administers two regulatory programs: Environmental Resource Permitting (ERP) and Reclamation.

- ERP regulates the creation or alteration of water bodies, including old mine pits. It may also be required for the creation of impervious areas and for certain projects exclusively in uplands. These permits focus on how the activity will affect wetlands, water quality, and water quantity. How changes to wetlands affect wildlife are also considered when ERPs are issued.
- Reclamation means the reasonable rehabilitation of land where resource extraction has occurred. Areas disturbed by mining operations, and subject to the reclamation requirements, must be reclaimed after mining is complete. Debris, litter, junk, worn-out or unusable equipment or materials must be appropriately disposed. The land must be recontoured and stabilized to control erosion. Bare areas must be revegetated. Prior to mining, the operator must provide a conceptual mining and reclamation plan or a reclamation notice.

Specific to limestone mining, s. 378.501, F.S., provides that no operator may begin the process of limestone resource extraction at a new mine without notifying the Secretary of DEP of the intention to mine. The operator's notice of intent to mine must include, but not be limited to:

- The operator's conceptual mining plan, which is comprised of such maps and other supporting documents as may be reasonably required by the DEP, the operator's time schedule that assures that the reclamation process is achieved in a timely manner, and the operator's estimated life of the mine.
- The operator's signed acknowledgment of the limestone reclamation performance standards provided by s. 378.503, F.S.

In addition to the regulatory programs discussed above, many mining activities are subject to other regulatory requirements. If water will be pumped or moved, a water/consumptive use permit may be required from the water management district. If wetlands or surface waters will be altered, a federal dredge and fill permit may be required from the U.S. Army Corps of Engineers. In order to address stormwater runoff and industrial waste discharges, an industrial wastewater permit may be required from the Industrial Wastewater Program within the DEP.

As an alternative, operators who mine heavy minerals or fuller's earth can apply for life-of-the-mine permits. The application for a life-of-the-mine permit is reviewed based on the requirements of the statutes and rules for the ERP and conceptual mining and reclamation plan. The DEP will coordinate and integrate the processing of the application with the applications for the other permits. The application for the life-of-the-mine permit must be approved or denied within 135 days of a complete application. It should be noted that this period is longer than the 90-day period for ERPs and conceptual mining and reclamation plans¹.

Mining and wetland mitigation

Before dredging or filling of a wetland area can begin, the financial responsibility for the completion of wetland mitigation must be provided. The financial responsibility mechanism must be equal to 110% of the estimated mitigation costs for all mitigation proposed during the life of the project. This mechanism can be very high for large projects with an expected long life expectancy and may be provided years prior to the adverse impacts to wetlands. An exception to this is an ERP for phosphate mining. For these type of permits, the initial financial responsibility mechanism must be sufficient for the mitigation of impacts to wetlands and other surface waters during the first three years of operation. After that, the financial responsibility mechanism is updated annually. The types of acceptable financial responsibility mechanisms are provided in the rules of the water management districts. The provisions of this subsection do not apply to any mitigation required pursuant to a permit initially issued by the DEP or water management district prior to January 1, 2005².

Limestone

Section 378.403(8), F.S., defines limestone as any extracted material composed principally of calcium or magnesium carbonate. According to the DEP, this definition can also include material that can be called dolomite, dolostone, marble, shell, sandy shell, coquina, chalk, marl, marl stone, travertine, and tufa. Many statutes use the terms 'limerock' or 'lime rock', however, these terms are not defined in statute.

Effect of Proposed Changes

The bill amends s. 373.414, F.S., replacing outdated mitigation ratio language, specific to limestone, with the use of the uniform wetland mitigation assessment method when determining the amount of wetland mitigation. The bill proposes that for limestone mines, the amount of the financial responsibility mechanism for the construction of wetland mitigation be reduced from the amount required for the impacts during the entire life of the project to the amount required for three years of impacts. The initial amount of financial responsibility for permitted activities will be provided for 110% of the estimated mitigation costs affected in the first three years of operations. Each year after that, the amount of the financial responsibility will be updated for the next year of operations.

The bill amends s. 378.901, F.S., authorizing limestone mine operators to apply for life-of-the-mine permits. DEP will coordinate and integrate the processing of the application with the application for other permits, such as industrial wastewater discharge permits and NPDES permits. For applications filed prior to July 1, 2010, the permit must be approved or denied within 90 days.

The bill also provides that the amendments to the above statutes will be retroactively applied to permits granted after September 1, 2009.

¹ Department of Environmental Protection 2010 analysis

² *Id.*

Finally, the bill conforms statutory references to use the term 'limestone'.

B. SECTION DIRECTORY:

Section 1. Amends s. 373.414, F.S., eliminating criteria for determining the ratio of mitigation-to-wetlands loss relating to limestone and sand mining; revising financial responsibility for mitigation for wetlands and other surface waters required by a permit for activities associated with the extraction of limestone; conforming terminology.

Section 2. Amends s. 378.901, F.S., authorizing mine operators proposing to mine or extract limestone to apply for a life-of-the-mine permit; providing an exception for life-of-the-mine permit application review requirements.

Section 3. Amends s. 316.520, F.S., conforming terminology

Section 4. Amends s. 337.0261, F.S., conforming terminology

Section 5. Amends s. 373.4149, F.S., conforming terminology

Section 6. Amends s. 373.41492, F.S., conforming terminology

Section 7. Amends s. 373.4415, F.S., conforming terminology

Section 8. Amends s. 377.244, F.S., conforming terminology

Section 9. Amends s. 378.403, F.S., conforming terminology

Section 10. Amends s. 378.4115, F.S., conforming terminology

Section 11. Provides for retroactive applicability

Section 12. Provides an effective date

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments below

2. Expenditures:

See Fiscal Comments below

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to DEP's analysis, limestone mine operators taking advantage of the proposed changes will be required to update the estimated mitigation costs and financial responsibility mechanism annually.

DEP also notes that the operators will have a lower amount of the financial assurance mechanism encumbered at any given time during the life of the project.

D. FISCAL COMMENTS:

DEP expects there will be a negligible effect on the collection of permit fees since the permit fees collected under the proposed changes (life-of-the-mine permit) would be the same as the aggregate of the fees for new permit applications and modifications.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

DEP provided the following comments:

Line 67 of the bill applies the financial responsibility provisions to the extraction of limestone **and** phosphate. In this context only a mine that extracts both limestone and phosphate could meet the provisions of s. 373.414(19)(a), F.S. as amended.

Line 102-103 of the bill attempts to correct a potential processing time clock issue with respect to the statutory 135-day processing time for applications filed before July 1, 2010, if this bill passes. There are a number of problems with this approach including 1) doing so has the effect of shortening the processing timeframe from 135-days to the 90-days provide by Ch. 120 thus reducing the agency time to process for some of the most complicated applications; 2) by making this retroactive to any application filed before July 1, 2010 the bill creates the potential of an **instant** default issuance of a permit for any application that is on day 90+ on the effective date of the bill; and 3) makes any application filed before July 1, 2010 ineligible for the tolling of the processing time period of s. 120.60 including any application currently benefiting from that provision. As such this language creates more problems than it solves therefore staff recommends that the language be removed from the bill.

Lines 292 to 297 are intended to apply the amendments to ss. 373.414 and 378.901 retroactively to any permit granted by the Department, under those statutes, after September 1, 2009. Ignoring the potential legal issues associated with applying a statutory change retroactively without a finding of an overriding public purpose it is difficult to determine what, if anything, this provision accomplishes that could not be accomplished under existing law if the other provisions of the bill, except as noted above, were to pass. Indeed the new provisions of ss 373.414 and 378.901 cannot be retroactively applied to permits already issued by the Department without agency action to modify those permits if such modification is desired and requested by the permit holder. Should this bill become law any limestone mine:

- application filled after the bill becomes law could benefit from the statutory amendments contained in this bill;

- application currently under review at the time the bill becomes law could, at the request of the applicant and with appropriate adjustment of the processing time clock, be reviewed in accordance with the amendments contained in this bill; and
- permit issued prior to this bill becoming law could, at the request of the permit holder and subject to review by the department, be modified in accordance with the amendments contained in this bill.

Based on this analysis DEP staff recommend the bill be amended to delete Section 11 in its entirety.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES